

ISSUE DATE: July 13, 1995

DOCKET NO. P-421/EM-94-1169

P-421/CI-95-695

ORDER APPROVING PROPOSAL AND INITIATING INVESTIGATION

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm
Tom Burton
Joel Jacobs
Marshall Johnson
Dee Knaak

Chair
Commissioner
Commissioner
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Commissioner

In the Matter of U S WEST Communications,
Inc.'s Proposal to Revise its Circle Calling Rate
Break Plan

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In the Matter of an Investigation Into
U S WEST's IntraLATA Toll Contribution
Levels and Their Effect on IntraLATA
Competition

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PROCEDURAL HISTORY

On December 12, 1994 U S WEST Communications, Inc. filed a proposal to revise its short haul toll discount plan, the Circle Calling Rate Break. On January 9, 1995 the Department of Public Service (the Department) filed comments recommending approval. On January 26 and March 2, 1995, the Department filed additional comments, still recommending approval.

On March 30, 1995 AT&T Communications of the Midwest filed comments urging rejection of the proposal as anticompetitive and inconsistent with statutory and regulatory provisions requiring U S WEST to include in its toll rates the same level of contribution to joint and common costs as is included in access charges.

On May 1, 1995 the Company filed reply comments.

On July 5, 1995 the matter came before the Commission for decision.

FINDINGS AND CONCLUSIONS

I. Company Proposal

The Circle Calling Rate Break is a short haul toll discount plan. For a \$1 monthly fee, the plan provides a 25% discount on intraLATA toll calls to neighboring exchanges within a 30 mile radius. The Company proposes to reduce the discount to 20% and to make the plan available in the 16 U S WEST exchanges where it is not currently offered.

The Company states the filing reflects a corporate strategy to move away from narrowly targeted service offerings toward offerings with broader customer appeal. The goal is to improve customer service by providing a more readily understandable assortment of service offerings.

II. Positions of the Parties

The Department examined the filing, determined it complied with applicable statutory requirements, and recommended approval.

AT&T Communications of the Midwest, Inc. challenged the proposal as violating Minn. Stat. § 237.60, subd. 4. That statute generally requires companies to price competitive services to cover incremental costs. It requires companies offering both toll and local service to price toll to recover more than incremental cost; it requires their toll rates to include at least the same level of contribution to joint and common costs as access charges recover. The statute states that contribution may be measured on an aggregate basis, as opposed to a time or mileage band basis.

AT&T also claimed the proposal violated Commission Orders in the “582 docket,” the proceeding which established access charges for intraLATA toll competition in Minnesota. In the Matter of a Summary Investigation Into IntraLATA Toll Access Compensation for Local Exchange Carriers Providing Telephone Service Within the State of Minnesota, Docket No. P-999/CI-85-582. Those Orders, too, required that long distance rates recover at least the same level of contribution to joint and common costs as access charges.

No one disputed that U S WEST’s toll rates as a whole recover at least the same level of contribution to joint and common costs as its access charges.¹ AT&T claimed, however, that the Circle Calling Rate Break should be viewed as a discrete service and should meet the contribution requirement on its own. Both existing and proposed Circle Calling rates would fail the contribution test on a stand alone basis.

¹According to the Department, however, this is true only when contribution is measured on a per minute basis.

The Company and the Department viewed Circle Calling rates as a subset of long distance rates and believed the contribution requirement applied to long distance rates in the aggregate.

III. Commission Action

A. Circle Calling Rate Break

The Commission agrees with the Department and the Company that the Company's proposal does not violate Minn. Stat. § 237.60, subd. 4. The statute explicitly allows contribution to be measured on an aggregate basis, when measuring on a time or mileage band basis would dictate higher contribution levels:

The company may do so [include contribution at the level provided by access charges in the incremental cost of long distance service] on an aggregate basis, instead of on a time or mileage band basis.

Minn. Stat. § 237.60, subd. 4.

Neither does the Company's proposal violate the contribution requirements of the 582 docket. The January 22, 1990 ORDER ACCEPTING COMPLIANCE FILING in that docket rejected the claim that U S WEST's contribution proposal must recover identical amounts of contribution in all mileage bands. The Commission explained that, for important public policy reasons, it had long declined to apply identical requirements to short haul and long haul traffic. (Because short haul traffic is often central to the life of an extended community, the Commission has traditionally placed a high value on keeping it affordable.)

The Commission is deeply concerned, however, by AT&T's allegation that the Company's proposal is anticompetitive. Ensuring fair competition in the long distance market is a longstanding Commission commitment. The Commission will therefore initiate an investigation into contribution issues, including the issue of whether individual long distance services should stand on their own for contribution purposes, as set forth below.

B. Broader Contribution Issues

1. Investigation Initiated

The contribution requirement established by the Commission in the 582 docket and codified in Minn. Stat. § 237.60, subd. 4 has two purposes: (1) to ensure that toll services cover their full costs and are not subsidized by other services; and (2) to ensure fair competition between local exchange carriers providing long distance service and interexchange carriers.

The Commission first applied the contribution requirement in January 1990, acting on a U S WEST (then Northwestern Bell) compliance filing. Three parties challenged the Company's contribution calculations, arguing contribution should be based on the composite state-wide access charges, not just U S WEST's access charges. The Commission disagreed, citing precedent for treating U S WEST's access charges as a proxy for all intrastate access charges and saying the Company had demonstrated that its long distance rates covered long distance costs.

The Commission also noted, however, that it could tolerate some imprecision in determining contribution, since there was then no competition to be discouraged or encouraged by imprecise pricing:

Finally, the Commission agrees with the RUD-OAG that, given the nascent status of current intraLATA toll competition, requiring contribution to be based on composite access charges would have virtually no competitive effect. Since requiring the use of composite access charges would not further the goal of fostering intraLATA toll competition, and since the other goal of preventing cross-subsidization has already been met, there would be no practical benefit from rejecting the use of the Company's own toll costs.

In the Matter of a Summary Investigation Into IntraLATA Toll Access
Compensation for Local Exchange Carriers Providing Telephone Service Within
the State of Minnesota, Docket No. P-999/CI-85-582, ORDER ACCEPTING
COMPLIANCE FILING (January 22, 1990) at 4.

The Commission also cautioned that the issue would have to be addressed again once competition developed:

The Commission notes that intraLATA toll competition is a developing sector of the telecommunications market. New developments in technology, in the industry, or in the marketplace could compel changes in the method of calculating contribution approved today. Similarly, Commission decisions on related matters, such as intraLATA presubscription, could so alter the competitive environment as to require such changes. The Commission will re-examine contribution levels in light of these developments as they occur. The existing record, and existing conditions, however, require the decision reached today.

In the Matter of a Summary Investigation Into IntraLATA Toll Access
Compensation for Local Exchange Carriers Providing Telephone Service Within
the State of Minnesota, Docket No. P-999/CI-85-582, ORDER ACCEPTING
COMPLIANCE FILING (January 22, 1990) at 4.

The events described above have occurred or are occurring. IntraLATA competition is a reality; intraLATA presubscription is underway. Telecommunications technology, the industry, and the marketplace have all changed since January 1990. Clearly, it is time to re-examine the contribution mechanism and procedures established in the January 1990 Order to ensure that they continue to be the best available means of ensuring full cost recovery and fair competition.²

2. Investigatory Procedures

The first step in this investigation must be to secure reliable and up-to-date information on contribution levels. The Commission will ask the Department to secure and file data stating U S WEST's aggregate contribution from intraLATA toll and per-minute contribution from intraLATA toll and to compare both figures to the aggregate and per-minute contribution from current access charges. The data should include contribution from calls between U S WEST exchanges, between U S WEST and non-U S WEST exchanges, and between non-U S WEST exchanges.

The Department should also examine the feasibility of determining contribution separately for the eight subcategories of U S WEST's message toll service. To the extent that separate calculations can be done, they should be provided. The Department should also provide its analysis of the effectiveness of current contribution procedures in furthering the goals of ensuring full cost recovery and fair competition.

Interested parties will have 30 days to comment on the Department's report, and reply comments will be due 20 days thereafter. The Commission will order further filings if necessary to complete the record.

The investigation will be conducted under docket number P-421/CI-95-695.

ORDER

1. The Company's proposal to revise its Circle Calling Rate Break program is approved.
2. An investigation is hereby initiated to examine the operation of the contribution requirements established in the 582 docket and to determine if those requirements are still the best available means of ensuring full cost recovery for intraLATA toll and fair competition in the intraLATA toll market.
3. Within six months of the date of this Order, the Department shall file the report described

²The statute gives the Commission the necessary flexibility by providing that toll rates must include "at least the same level of contribution to common and joint costs as is contained in the access charges to other telephone companies. . . ." (Emphasis added)

above.

4. Initial comments on the Department's report shall be filed within 30 days of the date of its filing.
5. Reply comments shall be filed within 20 days of the expiration of the initial comment period.
6. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)